

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE

MEGHAN CASEY, DAVID RAY, )  
ELIZABETH REINSBOROUGH, )  
MARK REINSBOROUGH, THOMAS )  
REINSBOROUGH, and KATHRYN )  
SHARPLESS, )

Plaintiffs, )

Case No.: \_\_\_\_\_

v. )

TOWN OF YARMOUTH, )

Defendant.

COMPLAINT  
(DECLARATORY AND INJUNCTIVE RELIEF SOUGHT)

**INTRODUCTION**

1. This is a case about the most essential function of the First Amendment’s free speech clause: the protection of open and unencumbered political discourse.
2. In November 2018, the Town of Yarmouth adopted a new restriction prohibiting town or school employees from campaigning for, or serving on, the Yarmouth Town Council. Activities associated with campaigning for, and serving in, elected office are among the most highly protected forms of expression, and the Town of Yarmouth has no adequate justification for this restriction.
3. Meghan Casey, a teacher in the Yarmouth Schools, has served her community on the town council with honor, but she will be prevented from campaigning for reelection under this restriction. Mark Reinsborough, a volunteer firefighter, and Elizabeth Reinsborough, an administrative assistant at the local middle school, have likewise

served their community with honor, but they will be prevented from ever running for town office under this restriction. David Ray, Thomas Reinsborough, and Kathryn Sharpless, residents of Yarmouth, are prevented from voting for the candidate that they view as the most qualified under this restriction.

4. Courts have consistently held that the First Amendment protects the right to campaign for public office, *Magill v. Lynch*, 560 F.2d 22, 27 (1st Cir. 1977); to serve in public office, *Mancuso v. Taft*, 476 F.2d 187, 190 (1st Cir. 1973); and to vote for one's preferred candidate, *Lubin v. Panish*, 415 U.S. 709, 716 (1974); *see also Callaghan v. City of South Portland*, 2013 ME 78, 76 A.3d 348. Restrictions such as the one adopted by Yarmouth must, at a minimum, substantially serve an important government interest.
5. Because Yarmouth cannot justify this restriction under this standard, Plaintiffs respectfully ask this Court to declare the restriction to be facially invalid and to permanently enjoin its enforcement.

#### **THE PARTIES**

6. Plaintiff Meghan Casey is a resident of Yarmouth, Maine, which is a part of Cumberland County.
7. Plaintiff David Ray is a resident of Yarmouth, Maine, which is a part of Cumberland County
8. Plaintiff Elizabeth Reinsborough is a resident of Yarmouth, Maine, which is a part of Cumberland County.
9. Plaintiff Mark Reinsborough is a resident of Yarmouth, Maine, which is a part of Cumberland County.

10. Plaintiff Thomas Reinsborough is a resident of Yarmouth, Maine, which is a part of Cumberland County.

11. Plaintiff Kathryn Sharpless is a resident of Yarmouth, Maine, which is a part of Cumberland County.

12. Defendant Town of Yarmouth was chartered in 1849 and is organized as a municipality under Maine law. Yarmouth is part of Cumberland County.

### **JURISDICTION AND VENUE**

13. This action seeks to vindicate rights protected by the First Amendment, as incorporated and applied to the states under the Fourteenth Amendment. It is brought under 42 U.S.C. § 1983.

14. The Court has jurisdiction over this civil rights action under 28 U.S.C. § 1331 because it arises under the Constitution of the United States, and under 28 U.S.C. §§ 1343(a)(3) and (4) because it is an action to redress the deprivation of a right—the right to free expression—secured by the Constitution of the United States, and because it is an action to secure equitable relief under the federal civil rights law, an act of Congress.

15. This Court has personal jurisdiction over the Defendant because it is a municipality located wholly within this federal district.

16. The Court has jurisdiction to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983.

17. Venue in this district is proper under 28 U.S.C. §§ 1391(b)(1) and (2) because the Defendant is a municipality located wholly within the district, and a substantial part of the events giving rise to the claims—the adoption of a restriction on plaintiffs' rights—occurred within the district.

18. This case was properly filed in Portland because a substantial part of the event giving rise to the claim—the imposition of a restriction on who may run for Yarmouth Town Council—took place in Cumberland County.

**FACTUAL ALLEGATIONS**

**Meghan Casey**

19. Plaintiff Meghan Casey has been a resident of Yarmouth, Maine since 2005, and she has been a Latin teacher at Yarmouth High School since 2007.

20. In June 2018, Meagan Casey ran for, and was elected to, a seat on the Yarmouth Town Council.

21. Councilor Casey has received consistent positive reviews as a teacher from parents and from her supervisors.

22. Councilor Casey's campaign for Yarmouth Town Council was based on the following ideas and goals: supporting the schools and senior citizens while taking the tax burden off homeowners; continuing to diversify Yarmouth's economic base; and promoting respectful communication and collaboration on the town council.

23. During her campaign, Councilor Casey engaged in the following activities: knocking on doors; introducing herself to voters and their families; listening to people's concerns about taxes; listening to long-term residents' concerns about being priced out of the town by taxes; discussing with people the need for council to be more collegial; participating in Chamber of Commerce candidate forum; placing lawn signs; distributing flyers; sending letters to people she met; and speaking to local newspapers about her candidacy.

24. During her service on the town council, Councilor Casey has engaged in the following activities: attending meetings; speaking at town council meetings on questions before

council; serving on the Chebeague Island transport committee; serving on the program advisory committee (overseeing activities for young people and elderly); and helping organize a town forum on the Browntail moth infestation.

25. If Councilor Casey is permitted to run for re-election, she intends to engage in the following activities: knocking on doors; distributing flyers; discussing the need to replace streetlights with LED lights; advocating for expanded use of solar technology; and supporting a “pay-as-you-go” trash collection policy.
26. Councilor Casey is aware of the law governing conflicts of interest and government service, codified at 30-A M.R.S. § 2605, and she has consistently abided by it.
27. If a situation were to arise before the Yarmouth Town Council in which Councilor Casey’s involvement would cause an actual conflict of interest, or create the appearance of a conflict of interest, Councilor Casey would either abstain or else follow the law governing such conflicts, which requires that she identify the situation and circumstances on the record; state that if she continued to participate that she would be unbiased and impartial, receive the evidence with an open mind, and base any decision solely on the record in accordance with the applicable standard of law; and receive the permission of her fellow councilors, by vote, after a public discussion on the record.
28. Members of the Yarmouth town council, including Ms. Casey, are not involved on any level in the negotiation of school employee compensation. School employee contracts are negotiated every three years between representatives for the union representing school employees and representatives for the school committee. The contract is then approved by the school committee.

29. The Yarmouth town council only tangentially deals with school employee compensation when it passes the entire school budget on to town meeting for a vote by town citizens. Even then, the town council does not vote to approve the school budget as a whole; it only votes to pass it to town meeting.
30. During the two times when the Yarmouth School Committee has presented the Yarmouth school budget to the Yarmouth Town Council for discussion, Councilor Casey has disclosed that she is on the faculty of the Yarmouth High School.
31. Nothing in Maine law prohibits a school employee or a town employee from serving as a municipal officer, or prohibits a municipal officer from serving as a school employee or a town employee.
32. Maine law, codified at 30-A M.R.S. § 2605(4)(A), specifically contemplates that public school teachers can and will serve as municipal officers.
33. Maine government is largely comprised of elected officials who are serving their communities and their state in addition to performing the work by which they earn a living, as most elected offices in Maine are either actually or practically unpaid.

**David Ray**

34. David Ray is a resident of Yarmouth, Maine, where he has lived for over 25 years. He is currently retired.
35. Mr. Ray served on the Yarmouth School Committee for 12 years. He currently serves as the chair of the Yarmouth Facilities Committee, which is an advisory committee to the school committee overseeing renovations of the town's schools.

36. Mr. Ray is deeply committed to public service and to the Town of Yarmouth. As such, he has strong views about the qualities necessary to represent his interest in elected government.

37. Mr. Ray believes that Councilor Casey's experience as a teacher in the Yarmouth schools gives her an important perspective on matters of public concern to the town, and he would like to be able to vote to reelect her to the town council.

38. Mr. Ray also wishes to exercise his right to vote for the candidate of his choice in future elections, even if that candidate is an employee of the Yarmouth School Department or the Town of Yarmouth.

**Elizabeth Reinsborough**

39. Elizabeth Reinsborough has lived in Yarmouth for 38 years. She works as an administrative assistant at Harrison Middle School in Yarmouth.

40. Ms. Reinsborough has previously served on the town Community Services Advisory Board, and she served as Chair of the Playground Committee.

41. Ms. Reinsborough is concerned that, if she were to decide to run for the town council, she would be prevented from doing so because of she is an employee of the Yarmouth School Department.

42. Among the issues that concern Ms. Reinsborough are the overcrowding and underfunding of the Yarmouth schools.

43. Ms. Reinsborough does not want to be required to choose between serving her community and continuing in her job.

44. Ms. Reinsborough wants to be able to vote for the candidate who shares her values and who is the best able to address the concerns of the town.

**Mark Reinsborough**

45. Mark Reinsborough is a lifelong resident of Yarmouth, Maine. He is currently employed as a construction estimator/surveyor for Shaw Brothers Construction.
46. Since 2002, when Mark Reinsborough was in high school, he has served his community as a volunteer firefighter.
47. Despite the title, volunteer firefighters are municipal employees, in order to ensure that they and the city have insurance coverage in case of an accident. Volunteer firefighters are paid on a per diem basis for hours worked responding to emergencies or engaging in training.
48. Mark Reinsborough believes deeply in public service, which was inculcated in him from an early age. The Town of Yarmouth annually recognizes a citizen of the town who has contributed their time, efforts, and concern for an extended and exemplary period for the benefit of their fellow citizens of Yarmouth. This award, the Latchstring Award, was originally created in 1980 to honor Mark Reinsborough's grandfather, Lawrence. In 2004, the Latchstring Award was awarded to Mark Reinsborough's father, Thomas.
49. In addition to continuing to serve as a volunteer firefighter, Mark Reinsborough would like to someday serve the town on public boards or the town council.
50. Mark Reinsborough would like to be able to vote for the candidate for town council who best reflects his value and concerns, whether or not that person is an employee of the town or the school department.

**Thomas Reinsborough**

51. Thomas (Tom) Reinsborough has lived in Yarmouth for almost his entire life (so far), and he works as a Code Enforcement Officer for the Town of Gray.



52. Tom Reinsborough has a deep and longstanding commitment to public service. He currently serves on the Yarmouth School Facilities Committee and on the Yarmouth Assessment Board of Appeals.
53. Tom Reinsborough previously served a one-year term on the Yarmouth Town Council in 1992 after Phillip Harriman resigned from the council to serve in the Maine Senate. In addition, he previously served on the Yarmouth Planning Board, the Yarmouth Zoning Board of Appeals, and the Yarmouth Accessibility Committee. He also previously served as a library trustee.
54. Tom Reinsborough served Yarmouth as a volunteer firefighter for 21 years.
55. In 2004, Tom Reinsborough was awarded the Latchstring Award from the Town of Yarmouth in recognition of his commitment to public service and volunteerism. The Latchstring Award was first awarded to Tom Reinsborough's father, Lawrence.
56. Tom Reinsborough is concerned about excluding people from public service simply because they work for the town or the school.
57. Tom Reinsborough does not believe that his service as a volunteer firefighter should have disqualified him from serving on the town council.
58. Tom Reinsborough is concerned about taxes, as well as whether the roads and public buildings in Yarmouth will be well maintained.
59. Tom Reinsborough would like to be able to vote for the candidate who will best represent his interests on the town council, whether or not that person is a town or school employee.

**Kathryn Sharpless**

60. Kathryn Sharpless lives in Yarmouth with her husband and two children. She is employed as an obstetrician/gynecologist at Maine Medical Partners in Portland, ME.
61. The most important issue of local concern to Dr. Sharpless is the school system. Dr. Sharpless and her husband specifically chose to move to Yarmouth because of the excellent reputation of the school system, the character of the town, and the location.
62. Dr. Sharpless voted for Ms. Casey for town council in 2018 because of Ms. Casey's deep knowledge of, and deep commitment to, the concerns of people in Yarmouth, including her commitment to supporting renewable energy, seniors, and thoughtful economic development. Dr. Sharpless believes that Ms. Casey's experience as a teacher in the Yarmouth school system makes her especially qualified to serve on the Yarmouth town council because of the perspective it gives her concerning young people and working families in the community.
63. Dr. Sharpless would like to vote to reelect Ms. Casey to the Yarmouth town council.

**The Restriction**

64. In August 2017, the Town of Yarmouth sought a legal opinion from its attorney, Shana Cook Mueller, concerning whether service on the town council by a town or school employee violated any Maine laws governing conflicts of interest or was otherwise inconsistent with Maine law.
65. Attorney Mueller concluded that nothing in Maine law prohibited a town or school employee like Councilor Casey, Elizabeth Reinsborough, or Mark Reinsborough from serving on the Yarmouth town council, and that preventing them from running for, and serving on, the council might violate their First Amendment rights.

66. On August 30, 2018, a group of Yarmouth residents called “Yarmouth Citizens for Responsible Government” submitted at least 526 signatures to the Yarmouth town council in order to require a vote on a proposed Charter Amendment prohibiting town and school employees from being elected to the Yarmouth town council, pursuant to the Article IX of the Yarmouth Town Charter.
67. The restriction was proposed in response to Ms. Casey’s election to the council in June 2018.
68. On September 17, 2018, at a Special Meeting, the Yarmouth town council approved the inclusion of the proposed Charter Amendment on the November 2018 ballot, which it was required to do since the council refused to adopt the restriction itself.
69. The Charter Amendment added the following restriction to Article II, Section 2 of the Yarmouth town charter, which governs town council qualifications: “No councilor shall hold any other paid office or position of employment with the Town or Department of Education (School Department) during the term for which the Councilor was elected to the Council. If a Councilor or Councilor-Elect shall fail to meet any of these qualifications, the Town Council shall, by resolution, declare the office of that Councilor or Councilor-Elect vacant.”
70. The Charter Amendment was approved by Yarmouth voters in November 2018.
71. All members of the Yarmouth town council are technically employees of the town of Yarmouth. Town councilors are paid \$1,000 per year for their service on the town council.

72. As a result of the Charter Amendment, Ms. Casey will be prohibited from running for reelection or serving an additional term on the Yarmouth town council unless she first resigns her position as a teacher.
73. As a result of the Charter Amendment, Elizabeth Reinsborough will be prohibited from running for election or serving on the Yarmouth town council unless she first resigns her position as an administrative assistant at Harrison middle school.
74. As a result of the Charter Amendment, Mark Reinsborough will be prohibited from running for election or serving on the Yarmouth town council unless he first resigns his position as a volunteer firefighter.
75. As a result of the Charter Amendment, all of the plaintiffs will be prohibited from voting for Councilor Casey, Elizabeth Reinsborough, Tom Reinsborough, or any other candidate for the Yarmouth Town Council who works for the Town of Yarmouth or the Yarmouth School Department, even if they believe that such a person is the most qualified candidate for that office.

**CLAIMS FOR RELIEF**

**Count I**

**Ms. Casey**

**(Violation of 42 U.S.C. § 1983: Free Expression)**

76. Plaintiffs hereby re-allege Paragraphs 1 through 75 as though fully set forth herein.
77. Defendant's prohibition on Ms. Casey campaigning for reelection and serving an additional term as a town councilor violates her right to freedom of expression because it is a restriction on political speech.

78. By prohibiting Ms. Casey from campaigning for reelection to the Yarmouth town council, the Defendant is denying her the ability to communicate with voters about why she is the best candidate for the position.
79. By prohibiting Ms. Casey from serving on the Yarmouth town council, the Defendant is denying her the ability to communicate with constituents about the needs of the community and her proposals to address those needs.
80. Defendant has no adequate justification for this restriction.
81. This restriction is not narrowly tailored to achieved whatever justification Defendant might have.
82. The restriction does not substantially serve whatever interest Defendant might have.
83. By acting under the color of state law to deprive Plaintiffs of rights guaranteed by the Constitution and laws of the United States, the Defendant has violated and continues to violate 42 U.S.C. § 1983.
84. As a result, Ms. Casey is entitled to declaratory and injunctive relief to permit her to campaign for and serve on the Yarmouth town council.

**Count II**  
**Elizabeth Reinsborough and Mark Reinsborough**  
**(Violation of 42 U.S.C. § 1983: Free Expression)**

85. Plaintiffs hereby re-allege Paragraphs 1 through 84 as though fully set forth herein.
86. Defendant's prohibition on public employees campaigning for or, or serving on, the Yarmouth town council chills Elizabeth Reinsborough's and Mark Reinsborough's exercise of their right to free expression.
87. The restriction, therefore, makes it less likely that Elizabeth Reinsborough and Mark Reinsborough will be able to exercise their full scope of First Amendment rights.

88. By prohibiting school employees like Elizabeth Reinsborough, and town employees like Mark Reinsborough, from campaigning for election to the Yarmouth town council, the Defendant is denying them the ability to communicate with voters about why they are the best candidates for the position.
89. By prohibiting Elizabeth Reinsborough and Mark Reinsborough from serving on the Yarmouth town council, the Defendant is denying them the ability to communicate with potential constituents about the needs of the community and their proposals to address those needs.
90. Defendant has no adequate justification for this restriction.
91. This restriction is not narrowly tailored to achieved whatever justification Defendant might have.
92. The restriction does not substantially serve whatever interest Defendant might have.
93. By acting under the color of state law to deprive Elizabeth Reinsborough and Mark Reinsborough of rights guaranteed by the Constitution and laws of the United States, the Defendant has violated and continues to violate 42 U.S.C. § 1983.
94. As a result, Elizabeth Reinsborough and Mark Reinsborough are entitled to declaratory and injunctive relief to permit them to campaign for and serve on the Yarmouth town council should they chose to do so.

**Count III**  
**All Plaintiffs**  
**(Violation of 42 U.S.C. § 1983: Free Expression)**

95. Plaintiffs hereby re-allege Paragraphs 1 through 94 as though fully set forth herein.
96. Defendant's prohibition on public employees campaigning for or, or serving on, the Yarmouth town council infringes upon all the plaintiff's rights to free expression.

97. By prohibiting town employees from campaigning for election to the Yarmouth town council, the Defendant is denying plaintiffs the ability to select a candidate that is most qualified, in their opinion, to serve in that office.

98. Defendant has no adequate justification for this restriction.

99. This restriction is not narrowly tailored to achieved whatever justification Defendant might have.

100. This restriction does not substantially serve whatever interest Defendant might have.

101. By acting under the color of state law to deprive plaintiffs of rights guaranteed by the Constitution and laws of the United States, the Defendant has violated and continues to violate 42 U.S.C. § 1983.

102. As a result, plaintiffs are entitled to declaratory and injunctive relief to permit them to vote for Ms. Casey or another Yarmouth town employee or Yarmouth school department employee to serve on the Yarmouth town council.

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**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the following relief:

a) Declare the Charter Amendment to the Yarmouth Town Charter prohibiting employees of the Town of Yarmouth or the Yarmouth School Department from serving on the Yarmouth town council to be unconstitutional;

b) Enter an injunction prohibiting Defendant from enforcing the prohibition on employees of the Town of Yarmouth or the Yarmouth School Department serving on the Yarmouth town council;

- c) Award Plaintiffs their reasonable attorney fees and costs; and
- d) Grant any additional relief as may be just and proper.

Respectfully submitted, this 27th day of August, 2019,

MEGHAN CASEY, DAVID RAY, ELIZABETH REINSBOROUGH, MARK REINSBOROUGH, TOM REINSBOROUGH, and KATHRYN SHARPLESS,

By their attorneys,

/s/ Zachary L. Heiden

Zachary L. Heiden

American Civil Liberties Union of Maine Foundation

121 Middle Street, Suite 200

Portland, Maine 04101

Tel: 207.619.6224

Fax: 207.774.1103

zheiden@aclumaine.org

/s/Emma Bond

Emma Bond

American Civil Liberties Union of Maine Foundation

121 Middle Street, Suite 200

Portland, Maine 04101

Tel: 207.619.8687

Fax: 207.774.1103

ebond@aclumaine.org